



REGULAR MEETING OF THE SAN MARCOS PLANNING AND ZONING COMMISSION

Tuesday, February 28, 2012, 6:00 p.m.

City Council Chambers
630 E. Hopkins Street

*Bill Taylor, Chair
Curtis Seebeck, Vice-Chair
Randy Bryan, Commissioner
Chris Wood, Commissioner
Travis Kelsey, Commissioner
Kenneth Ehlers, Commissioner
Carter Morris, Commissioner
Bucky Couch, Commissioner
Corey Carothers, Commissioner*

AGENDA

- 1. Call to Order.**
- 2. Roll Call.**
- 3. Chairperson's Opening Remarks.**
- 4. NOTE:** *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*
- 5. 30 Minute Citizen Comment Period.**

Consent Agenda:

- 6. Consider the approval of the minutes from the Regular Meeting on February 14, 2012.**

Public Hearings:

- 7. CUP-12-03 (Pappas Pasta)** Hold a public hearing and consider a request by Herlinda Lopez for renewal of a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 2550 Hunter Road, Suite 1100.
- 8. CUP-12-07 (Freebird's)** Hold a public hearing and consider a request by Freebird's World Burrito, on behalf of San Mar Dunhill, for renewal of a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 909 State Highway 80, Suite C.
- 9. CUP-12-08 (Eskimo Hut)** Hold a public hearing and consider a request by RKY, Ltd. on behalf of Eskimo Hut, for renewal of a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 216 N. Edward Gary Street.

- 10. CUP-12-09 (Rooftop on the Square)** Hold a public hearing and consider a request by Brandon Cash for the granting of a Restricted Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 126 S. Guadalupe Street.
- 11. CUP-12-10 (Chipotle)** Hold a public hearing and consider a request by San Marcos Entertainment, L.L.C., for renewal of a Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 401 N. LBJ Drive.
- 12. LDC-12-09 (Revision)** Hold a public hearing and consider a recommendation to City Council to amend the City's Land Development Code to establish a minimum period between the recommendation of the Planning and Zoning Commission regarding a Zoning Map Amendment, and consideration by the City Council of that Amendment.

Non-Consent Agenda:

- 13. Discussion and possible direction to staff regarding the Citizen Comment/Public Speaking Process.**
- 14. Discussion from staff regarding the conversion from a paper agenda packet to a digital agenda packet.**
- 15. Discussion and possible direction to staff regarding setting up the Board and Commission Retreat.**
- 16. Discussion and possible direction to staff regarding timeliness of items received at hearings – process.**
- 17. Discussion and possible direction to staff regarding expired Conditional Use Permits.**
- 18. Suggestions for future agenda items.**

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

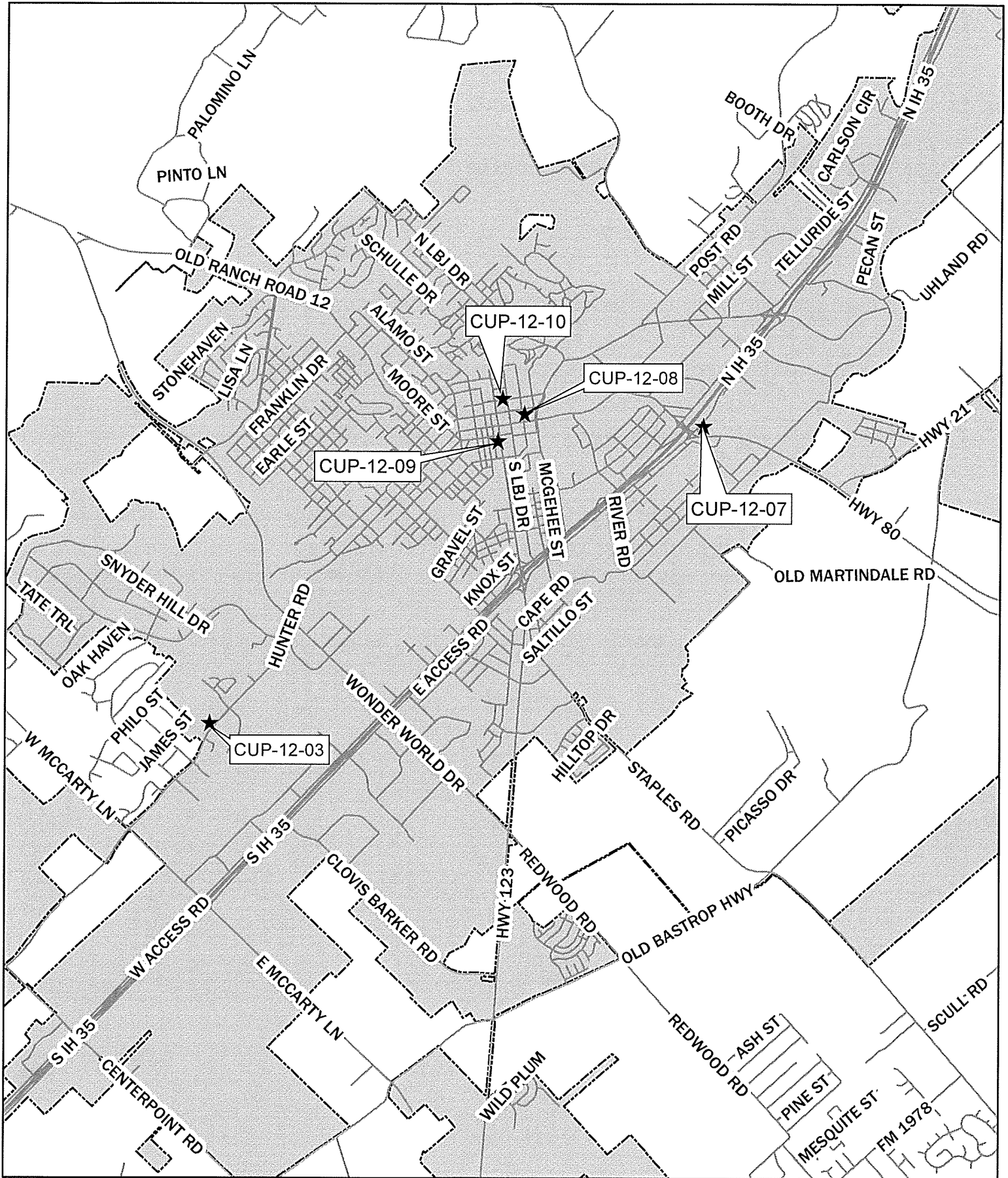
19. Development Services Report

1. Update on traffic and density report

20. Questions from the Press and Public.

21. Adjourn.

Notice of Assistance at the Public Meetings: The San Marcos City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in that area. Sign interpretative for meetings must be made 48 hours in advance of the meeting. Call the City Clerk's Office at 512-393-8090.



**Planning and Zoning
Commission Meeting
February 28, 2012
Location Map**

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**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
February 14, 2012**

1. Present

Commissioners:

Bill Taylor, Chair
Curtis Seebeck, Vice Chair
Kenneth Ehlers
Carter Morris
Chris Wood
Curtis Seebeck
Randy Bryan
Travis Kelsey
Corey Carothers

City Staff:

Francis Serna, Recording Secretary
John Foreman, Chief Planner
Christine Barton-Holmes, Chief Planner
Alison Brake, Planner
John Stanley, Planner

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:03 p.m. on Tuesday February 14, 2012 in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

4. NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session;*

5. 30 Minute Citizen Comment Period

Jim Garber, 104 Canyon Fork provided the Commission with a handout. Mr. Garber spoke regarding his concerns that the Traffic Impact Analysis (TIA) was submitted at the last minute. He pointed out that that TIA should be reviewed very carefully. Mr. Garber mentioned that the Hillside Ranch TIA submitted in September states that the Sessoms-Aquarena intersection functioning at a C and the build out is at a level D. He referred to the Casey project data submitted in November by Mr. Theriot that reflects current data and therefore should be used. Mr. Garber reported that the intersection is degrading and that the Casey report states the intersection is functioning at an F. Mr. Garber stated that Mr. Avila, City Engineer has said that the intersection is failing and cannot be fixed. He referred the Commission to the Land Development Code City Ordinance 7.4.3.1. He added that the report submitted by Mr. Theriot states the intersection is degrading therefore the Commission should vote no.

Melissa Derrick, 109 Kathryn Cove provided the Commission with a map that represents 1,670 signatures of citizens city wide. She told the Commission that citizens are losing faith in development of San Marcos. Ms. Derrick pointed out that citizens are seeing single family neighborhoods being destroyed by multifamily development like The Retreat. Secondly, she added with the Casey Development, people are wondering what is going on. Ms. Derrick explained that she purchased her property seven years ago because it is zoned single family. She felt that they have a strong neighborhood group that they were sure the standards would be upheld and that she was getting a good return on her investment. She added that when she was out gathering signatures people say they are afraid that they will also get a Retreat development in their neighborhood. She explained that all the signatures on the petition oppose any change to the current zoning designation within the areas bordered by Sessom Drive, Alamo Street, Chestnut Street, and Holland Street. She said they oppose rezoning single family land for Hillside Ranch Phase II at Holland and N. LBJ and rezoning any other single family neighborhoods to apartments in San Marcos. Ms. Derrick asked the Commission to call a moratorium on rezoning for apartment complexes in single family neighborhoods until the new Master Plan for San Marcos is complete.

Jaimy Brieihan, 134 E. Hillcrest stated he supports the previous testimony's about rezoning and the strong opposition to change their neighborhoods. He said he attended two of the Level of Service Meeting held by the City of San Marcos. He pointed out that he felt there were some frightening statistics regarding the apparent trend to increase the population in the next few years. He mentioned that before increasing the population we need to make sure the infrastructure is in place. Mr. Brieihan said traffic and noise is an issue but the traffic issue is enough for the Commission to vote no. He explained that he purchased his home eleven years ago and would prefer to stay in the neighborhood. He said neighbors are considering moving because of the proposed developments. Mr. Brieihan pointed out that residents in the apartments will come and go but permanent residents are here to stay.

Diane Wassenich, 11 Tanglewood said she is impressed with the neighbors doing their research and reading the agenda packets. She said she was especially impressed with Dr. Garber who found that the TIA's do not match. Ms. Wassenich stated that it is good that neighbors are paying attention and speaking to the Commission about their concerns. She made comments regarding the Hillside Ranch II project. She pointed out that most signatures are residents in the Historic Neighborhoods, Mimosa Circle and Westover areas. Ms. Wassenich referred to the City Attorney discussion and commented on how many places are currently zoned multifamily. She pointed out that there is no shortage of multifamily zoning. Ms. Wassenich also pointed out that wastewater capacity is an issue. She added that crime is also a concern in the Sagewood, Craddock area and Hillside I. She pointed out that there is more crime occurring at apartments than in residential neighborhoods.

Sherwood Bishop, 124 Elm Hill Court stated he has spoken in opposition on numerous apartment projects. He explained that Hillside Ranch II project is different and is in support of the project. He explained that people living around the apartment, Elm Hill Court, N. LBJ, Cypress Court originally opposed the idea to have apartments. Mr. Bishop explained that if apartments were not built, the neighborhood would get single family, two story houses looking down their back yards with wooden fences on their property line. He further explained that if the project is built as negotiated, they will include a 150' buffer with a trail that the applicant will provide entering into the Spring Lake Nature Preserve with public access. In addition, the applicant will provide some funding for a roundabout at the intersection of Holland and N. LBJ. He asked the Commission to support the project.

Jay Hiebert, 209 W. Sierra Circle presented a chart prepared by Laurie Moyer, Assistant City Manager titled Developed and Vacant Land by Zoning. Mr. Hiebert did not see any reason to allow rezoning for Hillside Ranch II or any neighborhoods from SF-6 to multifamily. He commented that he attended the Level of Service Meeting and expressed concerned regarding the statistics presented at the meeting. He asked the Commission to approve a moratorium on rezoning of single family until we know how we can handle the increase in population. He encouraged all to get a book by Thomas Friedman titled Hot Flat and Crowded.

Katie Schindler, 1805 Aquarena Springs spoke in support of Mr. Bishop. She explained that there have been bad experiences with The Retreat, but that the Hillside Ranch owners have made adjustments to the original site plan to make the neighbors happy. Ms. Schindler stated she is in support of the project.

Camille Phillips, Franklin Drive said she is very concerned about neighborhoods and living in single family homes. She said she would like to talk about keeping people in their homes. Ms. Philips informed the Commission that on March 5th they will begin another course on A Matter of Balance. She explained that the course is on preventing falls in people over the age of 60. Ms. Phillips stated that the course will be on Monday and Wednesday mornings at 9:30-11:30 a.m. at First Lutheran Church, 130 W. Holland. She added that there is no charge for the course. She said people should call First Lutheran Church at 392-2064 to register. She also commented about economy and preventing injury to the elderly. Ms. Phillips asked the Commission to table or deny the Hillside Ranch request to allow the neighbors to receive additional information. She pointed out a book titled Building Healthy Communities about a way to think about walk ability, people's health and planning for the long term.

Tara Foley, 1350 N. LBJ Drive stated she is in support of Mr. Bishop and feels that the applicant has made appropriate accommodations for Hillside Ranch Phase II. She said she is a resident at Hillside Ranch and informed the Commission that residents are required to have a background check and feels that crime is not a concern. Ms. Foley said she support the project.

Jill Newman, 1805 Aquarena Springs, stated she was in support of Mr. Bishop. She explained that she has reviewed the plans and all the concessions provided by the applicant. Ms. Newman said that she felt if a single family home development was built, they would lose the wildlife aspect of the neighborhood. She stated that the proposed development is the best possible use for the property.

Steve Ramsey, Ramsey Engineering, 3206 Yellow Pine Terrace, Austin, Civil Engineer for the Hillside Ranch Phase II. Mr. Ramsey focused on engineering facts regarding surface drainage, storm water detention and impervious cover, erosion potential and water quality related to the Hillside Ranch project. He said he would be available to answer questions. Mr. Ramsey gave a brief overview of the Engineering Report he submitted.

David Wendel, 118 E. Holland thanked the City Attorney for his presentation. He referred to the rainfall in the previous weeks and pointed out that there were several issues with two previously approved development safeguards failing. Mr. Wendel explained in areas where buildings were demolished, a landslide occurred spilling mud and silt onto the street down to the Showdown Saloon. In addition, detention ponds failed sending mud onto unwanted areas. Mr. Wendel pointed out that both areas were cleaned expect for the silt in the sewers. He explained that San Marcos has all types of erratic weather and disasters. He added that the rainstorms in the last couple of days were minor and the silt fences and retention ponds on two different projects failed. He asked what are they to expect with new development along the river.

Sheran Seif, 124 Elm Hill Court stated she is in support of Hillside Ranch Apartments project. She asked the Commission for their approval of the project. Ms. Seif stated that she agrees with other citizens present and that have signed the petition. She asked the Commission to be cautious when allowing zoning changes that allow building apartments in single family residential areas. She added that the Hillside Ranch development is the right option for the neighborhood. Ms. Seif explained that the project will allow for preservation of the area closest to the neighborhood and converse the backyard views and keeping building as far away from the neighborhood as possible. She added that the developer has been extremely flexible and has met their needs and concerns. Ms. Seif asked the Commission to listen to the people that are going to be the most affected by the project. She asked the Commission for their support.

Jeff Lowe, 1255 N LBJ stated he lives within 200' of the project. Mr. Lowe expressed his concerns regarding the location of the proposed exit on the Hillside Ranch Phase II project. He pointed out that there will be an increase in traffic due to the location of the exits. Mr. Lowe added that he has problems exiting his property due to the traffic.

Cynthia Gonzales, 113 Elm Hill Court stated she lives within 200' of the project. She said she has changed her mind and is in support the request. She said the applicants have worked closely with those that live closest to the project. Ms. Gonzales said that she suggested a roundabout which is included in the design. In addition, the proposed project preserves the natural beauty of the property. Ms. Gonzales felt that an adequate buffer is being proposed. She encouraged the Commission to support the request.

Seth Katz, 225 N. Comanche, owner of Zellick's, 336 W. Hopkins updated the Commission on the renewal of Zelick's CUP. He said they have had three meeting with Mike Dillon of Crystal River Inn. He said they have agreed to have Hays County mediation to assist. Mr. Katz added that both businesses had very busy weekends with no issues. He informed the Commission that they have contacted a sound solution company, Acoustical Solutions. They found that the alternatives are quite expensive. Mr. Katz stated he is very concerned about the situation and are still looking into finding a solution. He added that they are working towards a great downtown environment.

Consent Agenda:

6. Consider the approval of the minutes from the Regular Meeting on December 13, 2011, January 10, 2012, and January 24, 2012.

7. PC-12-01(03) (Lot 1, Kyle Hill Subdivision) Consider a request by Steve Henry to plat one lot, measuring 0.77 acre and zoned MF-24, located at 221 Ramsay Street.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Morris the Commission approved on consent to approve the minutes of the Regular Meeting on December 13, 2011; January 10, 2012; and January 24, 2012 and PC-12-01(03). The motion carried unanimously.

Public Hearing

8. CUP-12-04 (Nephew's) Hold a public hearing and consider a request by Bar Entertainment Inc. dba Nephew's for renewal of an existing Unrestricted Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 100 N. Guadalupe Street.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Kelsey the Commission approved on consent to approve CUP-12-04 with the conditions that the permit shall be valid for three (3) years, provided the standards are met, subject to the point system, doors to the exterior patio area shall only be opened as necessary for ingress and egress, no speakers or live music shall be allowed outside, and the applicant shall comply with all regulations regarding occupant load, ingress and egress, and sprinkler coverage as directed by the Fire Marshal. The motion carried unanimously.

9. CUP-12-05 (Cool Mint Café) Hold a public hearing and consider a request by Cool Mint, Inc., for renewal of a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 415 Burleson Street.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Bryan, the Commission voted eight (8) for and one (1) against to approve CUP-12-05 with the conditions that the permit is valid for a period of one year, provided all standards are met, subject to the point system. Commissioner Couch voted no. The motion carried.

10. CUP-12-06 (Lone Star Deli) Hold a public hearing and consider a request by Sage Outdoor Services, L.L.C. dba Lone Star Deli, for renewal of a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 3941 South IH-35, Suite 112.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Wood and a second by Commissioner Morris the Commission approved nine (9) for and (0) none against to approve CUP-12-06 with the conditions that the permit is valid for a period of one year, as the business transitioned from a walk up concession stand to a sit down restaurant, provided standards are met, subject to the point system, no open containers of alcohol shall be issued for off-premise consumption, and signs remain posted where seating is located and at the purchase window stating that it is prohibited for open containers of alcohol to be taken off premise. The motion carried unanimously.

Non-Consent Agenda:

11. Presentation from staff and discussion regarding the North LBJ Capital Improvement Project.

12. LUA-11-23 (Hillside Ranch Phase 2) Consider a request by ETR Development Consulting, on behalf of Jared Shenk and Dan Anderson, for a land use map amendment from Low Density Residential (LDR) to Medium Density Residential (MDR) for 10.925 acres located at 1410 N. LBJ Drive.

13. ZC-11-37 (Hillside Ranch Phase 2) Consider a request by ETR Development Consulting, on behalf of Jared Shenk and Dan Anderson, for a zoning change from Single Family Residential (SF-6) to Multi-Family-12 (MF-12) for 10.925 acres located at 1410 N. LBJ Drive.

14. PDD-11-11 (Hillside Ranch Phase 2) Consider a request by ETR Development Consulting, on behalf of Jared Shenk and Dan Anderson, for a Planned Development District Overlay (PDD), with a base zoning of Multi-Family-12 (MF-12) for 10.925 acres located at 1410 N. LBJ Drive.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Carothers, the Commission voted seven (7) for and two (2) against to approve LUA-11-23, ZC-11-37 and PDD-11-11. Commissioners Seebeck and Kelsey voted no. The motion carried.

15. Suggestions for future agenda items.

Commission members and staff may discuss and report on items related to the Commission's general duties and responsibilities. The Commission may not take any vote or other action on any item other than to obtain a consensus regarding items that will be placed on future agendas for formal action.

16. Development Services Report.

1. Board and Commission Reception

2. Annual Report

17. Questions from the Press and Public.

Jane Hughson suggested to the Commission that they table incomplete application submittals. She explained applicants will learn that incomplete applications are not acceptable once their request have been tabled a few times.

18. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission at 8:21 p.m. on Tuesday, February 14, 2012.

Bill Taylor, Chair

Curtis Seebeck, Vice Chair

Chris Wood, Commissioner

Randy Bryan, Commissioner

Kenneth Ehlers, Commissioner

Carter Morris, Commissioner

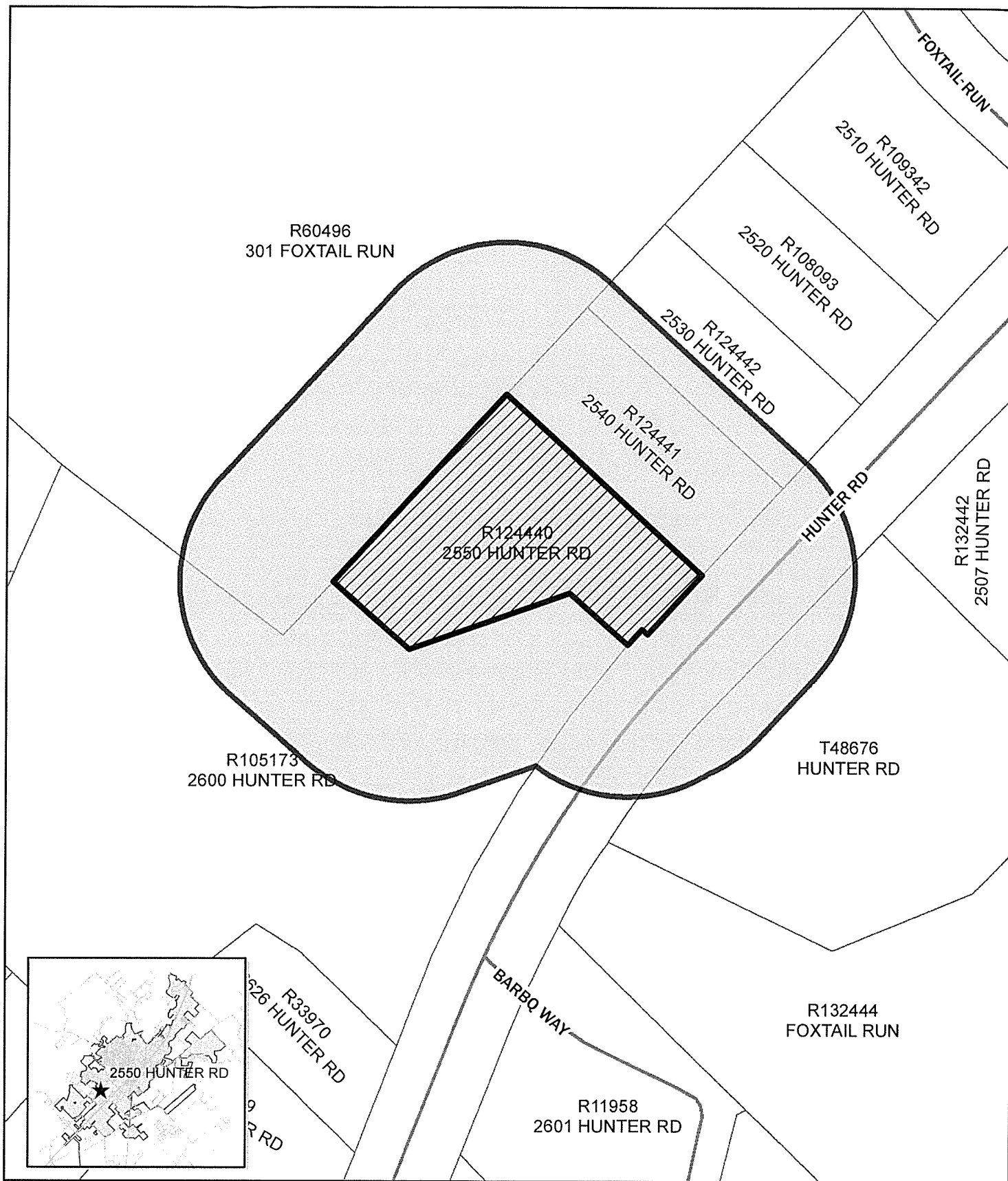
Curtis Seebeck, Commissioner

Travis Kelsey, Commissioner

Corey Carothers, Commissioner

ATTEST:

Francis Serna, Recording Secretary



CUP-12-03

Papa Pasta's

2550 Hunter Rd

Map Date: 01/05/12



Notification Buffer
(200 feet)



Site Location

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for reference purposes only. No warranty is made
concerning the map's accuracy or completeness.



CUP-12-03

Conditional Use Permit

Pappas Pasta

2550 Hunter Road



Applicant Information:

Applicant: Herlinda Lopez
2550 Hunter Rd
San Marcos TX 78666

Property Owner: David Chiu
P.O. Box 1014
San Marcos TX 78667

Applicant Request: Renewal of a Conditional Use Permit (CUP) to allow on-premise consumption of beer and wine at a restaurant establishment. Approval was granted for an initial one year period in 2006.

Notification: Public hearing notification mailed on February 17, 2012. A list of property owners notified is attached.

Response: None to date

Subject Property:

Expiration Date: July 28, 2010

Location: 2550 Hunter Road

Legal Description: Hunters Hill Section 1, Lot 3

Frontage On: Hunter Rd

Neighborhood: None

Existing Zoning: Community Commercial

Master Plan Land Use: Commercial

Sector: Sector 9

Existing Utilities: Adequate

Existing Use of Property: Restaurant

Proposed Use of Property: Same

Zoning and Land Use
Pattern:

| | Current Zoning | Existing Land Use |
|---------------|----------------|-------------------|
| N of Property | P | |
| S of Property | NC | |
| E of Property | PDD | Sanctuary Lofts |
| W of Property | MF-18 | |

Code Requirements:

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. The location **does not** meet these distance requirements. An amendment to the Land Development Code [Section 4.3.4.2(b)(3)] allows a variance to the distance requirements permitting alcohol-serving restaurants to seek a CUP, provided certain conditions are met. This location has received such a variance. It will be subject to the code standards for on-premise consumption of alcoholic beverages, and the penalty point system for violations (Section 4.3.4.2).

The business is not within the CBA.

Comments from Other Departments:

Building, Police, Engineering, Fire, Environmental Health, and Code Enforcement have reported no major concerns regarding the subject property.

Case Summary

The restaurant is located in a multi-tenant building designed to contain three restaurants, retail/office lease space, and four loft apartments. In 2008, the applicant received a variance to allow the applicant to apply for a CUP for an alcohol-serving restaurant less than 300 feet from a public school, provided certain standards were met. The applicant was granted a CUP on June 10, 2008, which authorized the on-premise consumption of beer and wine for one year. The CUP was renewed for one year on July 28, 2009. No further renewals were found. Staff sent a letter in January 2012 notifying the applicant that the CUP had expired.

Capacity is shown as 75 indoors with no outdoor seating. Hours are from 11AM to 10PM. No amplified live music is proposed. A full menu is offered. The applicant states that there have been no substantial changes to the floor plan or site in the last year.

Planning Department Analysis:

As a condition of the CUP and the variance, the applicant was to submit a report showing that alcohol sales are no more than 25% of the total gross revenue of the business for the previous year. The applicant has provided this report, which shows alcohol sales as less than 10% of gross revenue. Several of the conditions recommended are from the original CUP and repeat requirements found in Section 4.3.4.2(b)(3) of the Land Development Code. This is to clarify the requirements. Also, it acknowledges the needs of the San Marcos Consolidated Independent School District, which had to consent to the variance so the applicant could seek the CUP. With the exception of the lapsed renewal, the business has complied with these conditions.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

However, 4.3.4.2 (b) (3) (a) (5) requires that properties operating under the variance for distance requirements be subject to annual renewals.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The CUP shall be valid for one (1) year, provided standards are met, subject to the point system.**

2. Include the statement "Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages." on the restaurant menus;
3. The restaurant shall operate such that gross revenue from alcohol sales will be less than 25% of total gross revenue for the business, with the restaurant submitting annual reports indicating this condition has been met;
4. The primary entrance for the restaurant shall remain at least 200 feet from the primary entrance of the school; and
5. Alcoholic beverages shall not be served earlier than 11 a.m. or later than 10 p.m.

| Planning Department Recommendation: | |
|-------------------------------------|---|
| | Approve as submitted |
| X | Approve with conditions or revisions as noted |
| | Alternative |
| | Denial |

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

John Foreman

Chief Planner

February 22, 2012

Name

Title

Date

Pappa Pasta's Specialties

Pasta Bolognese\$7.95

Spaghetti with pappa's homemade meat sauce topped with fresh grated parmesan cheese

Pasta Champigones\$7.95

Sautéed mushrooms in garlic, scallions over a bed of linguini

Pasta Marinara\$7.95

Penne pasta topped with a homemade marinara sauce and fresh grated parmesan cheese

Pasta Primavera\$8.95

Seasonal grilled vegetables with a garlic lemon butter sauce over a bed of linguini

Pasta Alfredo\$8.95 add chicken \$2.50 add shrimp \$3.95

Fettuccini tossed in an alfredo cream sauce with scallions and parmesan cheese

Spinach and Mushroom Pasta\$8.95

Linguini pasta with sautéed spinach mushrooms & garlic in a lemon butter garlic sauce

Pasta y Salmon\$11.95

Salmon filet grilled and laced with a creamy chipotle sauce served over a bed of linguini

Pappas Roughy\$12.95

Orange roughy filet sautéed and laced with a creamy lemon garlic butter sauce and served over a bed of linguini

Pasta y Camarones\$11.95

Sautéed shrimp with hearts of palm and capers in a lemon butter garlic sauce served over a bed of linguini

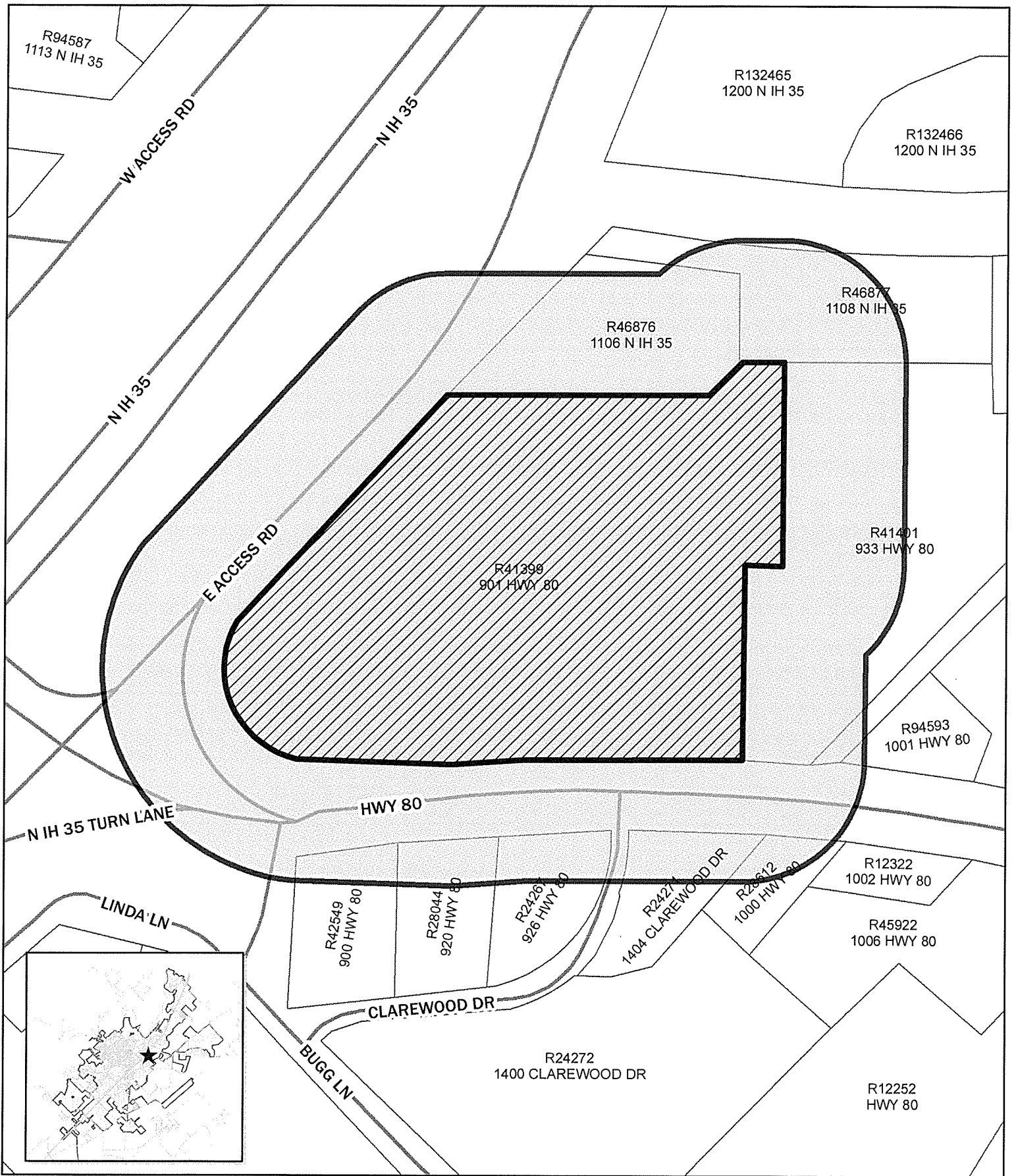
Drinks

Iced Tea, Hot Tea, Coffee\$1.59 free refills

Coke, Diet Coke, Sprite, Dr. Pepper, Diet Dr. Pepper, Big Red\$1.50 per

Perrier Mineral Water \$2.50

Due to the close proximity of a school campus, we urge you to drive carefully. The restaurant will accommodate, as necessary, any individuals that may need transportation consumption of alcoholic beverages.



CUP-12-07

Freebirds

909 State Highway 80

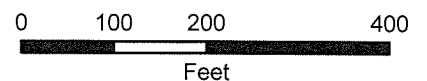
Map Date: 01/26/12



Notification Buffer
(200 feet)

Site Location

This map was created by Development Services
for reference purposes only. No warranty is made
concerning the map's accuracy or completeness.



CUP-12-07

Conditional Use Permit

Freebird's

909 State Highway 80, Ste C



Applicant Information:

Applicant: Freebird's Beverage, LLC
Mailing Address: 6475 Christie Ave, Ste 300
Emeryville, CA 94608

Property Owner: BLN Properties No. 3, L.L.C.
16418 Encanto Pass
San Antonio, TX 78247

Applicant Request: Renewal of a Conditional Use Permit (CUP) to allow the on-premise consumption of beer and wine.

Public Hearing Notice: Public hearing notification was mailed on February 17, 2012.

Response: None as of February 21, 2012

Subject Property:

Expiration Date: September 8, 2010

Location: 909 State Hwy 80, Ste C

Legal Description: San Mar Plaza Mall Reserve A- 10.344 Acres Reserve C - 0.878 AC 488,878 SQ FT

Frontage On: Hwy 80, IH 35

Neighborhood: None

Existing Zoning: "GC" – General Commercial

Sector: Sector 6

Utilities: Sufficient

Existing Use of Property: Restaurant

Zoning and Land Use Pattern:

| | Current Zoning | Existing Land Use |
|---------------|----------------|-------------------|
| N of property | HC | Commercial |
| S of property | GC | Commercial |
| E of property | GC | Commercial |
| W of property | - | IH 35 |

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements. CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

Case Summary

Freebird's is located in the SanMar Plaza shopping center. Freebird's was granted a CUP to serve beer and wine at this location on January 23, 2007. The request was approved for one year. The CUP was renewed for one year on September 8, 2009. No further renewal was found. Staff sent a letter in January 2012 notifying the applicant that the CUP had expired.

The business has continued to serve alcohol. Hours are 11AM to 9:30PM Sunday to Thursday and 11AM to 10:30PM Friday and Saturday. No amplified music is proposed. Parking is located in a shared lot.

Comments from Other Departments:

Health, Building, Engineering, Police, and Code Enforcement have not reported major concerns regarding the subject property.

Planning Department Analysis:

Staff has reviewed the request for compliance with the Land Development Code and it appears that the request is consistent with the policies and the general intent of the zoning district, is compatible with the character and integrity of adjacent developments, and does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for three (3) years, provided standards are met, subject to the point system.**

| Planning Department Recommendation: | |
|-------------------------------------|---|
| | Approve as submitted |
| X | Approve with conditions or revisions as noted |
| | Alternative |
| | Denial |

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

John Foreman

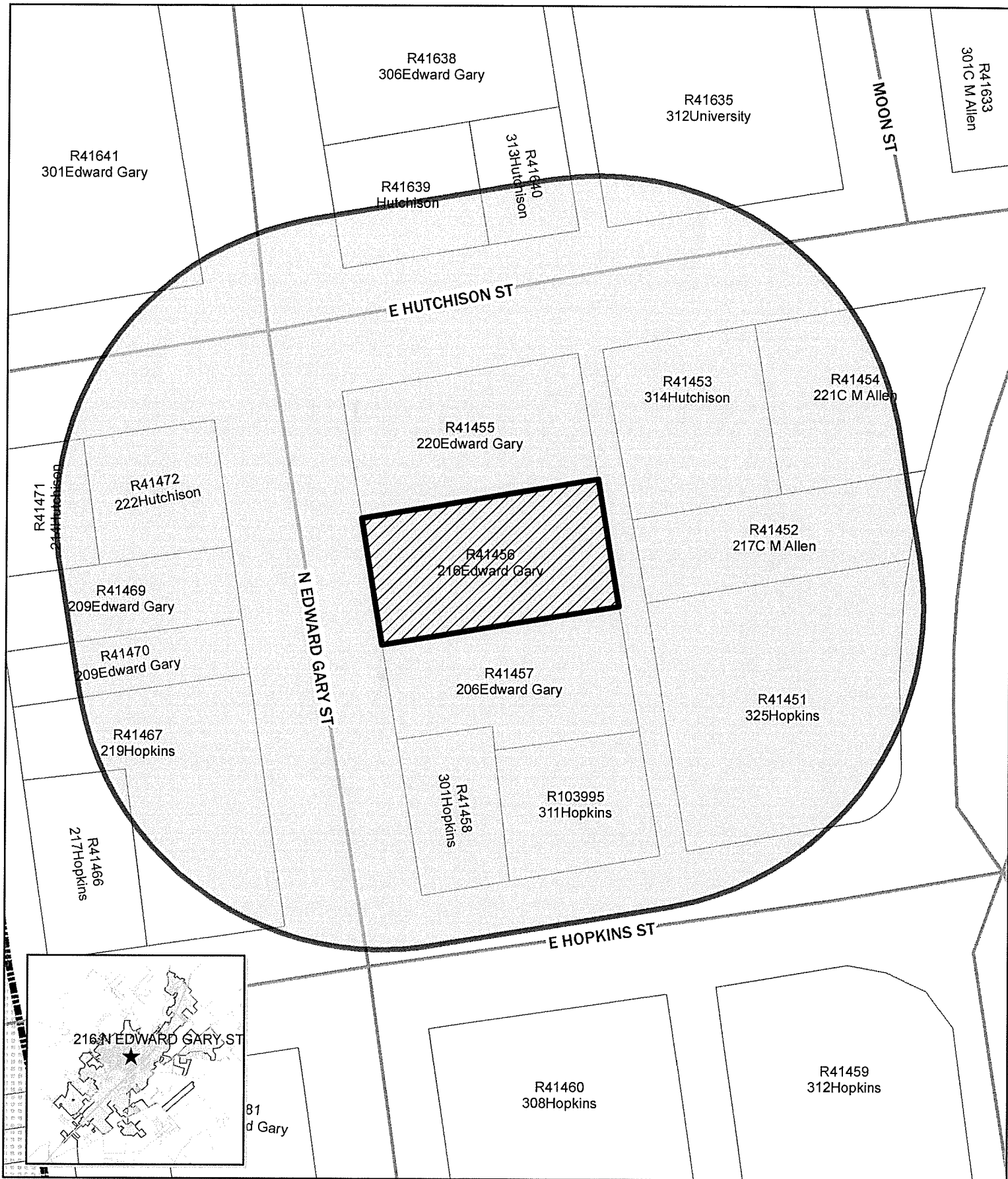
Chief Planner

2/22/2012

Name

Title

Date



CUP-12-08

Eskimo Hut

216 N Edward Gary St

Map Date: 01/27/12

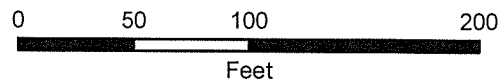


Notification Buffer
(200 feet)



Site Location

This map was created by Development Services
for reference purposes only. No warranty is made
concerning the map's accuracy or completeness.



CUP-12-08

Conditional Use Permit

Eskimo Hut

216 Edward Gary



Applicant Information:

Applicant: RKY, Ltd. (Eskimo Hut)

Mailing Address: 216 Edward Gary
San Marcos, TX 78666

Property Owner: Carson Diversified Properties 2, L.L.C.
1911 Corporate Drive, Suite 102
San Marcos, TX 78666

Applicant Request: Renewal of a Conditional Use Permit (CUP) to allow the on-premise consumption of beer and wine.

Public Hearing Notice: Public hearing notification was mailed on February 16, 2012.

Response: None as of February 21, 2012

Subject Property:

Expiration Date: February 24, 2012

Location: 216 Edward Gary

Legal Description: Original Town of San Marcos, Lot 6, Block 4

Frontage On: Edward Gary

Neighborhood: Downtown

Existing Zoning: "T-5" – Urban Center

Sector: Sector 8

Utilities: Sufficient

Existing Use of Property: Convenience Store

Zoning and Land Use Pattern:

| | Current Zoning | Existing Land Use |
|---------------|----------------|-------------------|
| N of property | T-5 | Commercial |
| S of property | T-5 | Commercial |
| E of property | T-5 | Commercial |
| W of property | T-5 | Commercial |

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

Case Summary

The Eskimo Hut is a convenience store that is located at 216 Edward Gary, outside of the Central Business Area. The Commission approved a CUP in February 2009 for the duration of three years to allow the on-premise consumption of beer and wine. The applicant is requesting to renew the Conditional Use Permit. Staff sent out a letter on January 13, 2012 reminding the applicant that the current CUP will expire on February 24, 2012. The applicant had until January 31, 2012 to respond by submitting an application to renew. The application was received by Staff on January 26, 2012.

The gross floor area is 2,100 square feet, which includes the outdoor above-ground deck, and there are eighteen off-street parking spaces. The application indicates that the indoor seating capacity is ten and the outdoor seating capacity is sixteen and indicates the hours of operations from 11 a.m. to midnight with no live entertainment proposed. Currently, the applicant has an active TABC permit to allow the on-premise consumption of beer and wine. The applicant is not proposing any other improvements to the structure at this time.

Comments from Other Departments:

Health, Building, Engineering, and Code Enforcement have not reported major concerns regarding the subject property.

Staff received an email from Chase Stapp, Assistant Chief of Police, Operations, with comments regarding this location. The Downtown unit Corporal reported that there had been three cases of selling to minors reported as well as a lewd conduct case that is still pending with the TABC. The email also stated that there were some management issues in that the store had closed for several days but the doors were left unlocked and the day shift officers had trouble with management response.

Planning Department Analysis:

The drive-thru is an existing non-conformity, and may be allowed to remain under section 4.5.3.1 of the LDC. In 2009, the applicant indicated that there were plans to move the existing window in order to increase the stacking space by about ten feet to bring the number of queuing spaces up to three. This is allowed under section 4.5.3.2(a)(2) of the LDC, which states that nonconformities may be altered to upgrade the quality and safety of the structure. The drive-thru window has been moved up and a sliding glass door is currently being used for the drive-thru. There is sufficient signage, on the previous drive-thru window that requests patrons to drive up to the doors.

Signage was an issue at the prior location, at the corner of University Drive and C.M. Allen, where there had been several unpermitted signs. Though there is currently no known issue with signage at the present location, staff recommends the condition below to ensure compliance with Chapter 6, Article 3 of the LDC, which deals with signs. In preparing the current report, staff researched the sign permit history of the establishment and all permanent attached signs have been properly permitted.

While the issues that the Police Department reported indicate there may be management issues they do not meet the criteria of Section 4.3.4.2(6)(a)(2), which regulates the accumulation of points.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

Although the applicant has operated under a CUP at the current location for three years, staff recommends approval for one year due to the issues mentioned by the Police Department.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system; and**
- 2. All signage must conform to the standards in Chapter 6, Article 3 of the Land Development Code.**

| Planning Department Recommendation: | |
|-------------------------------------|---|
| | Approve as submitted |
| X | Approve with conditions or revisions as noted |
| | Alternative |
| | Denial |

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Alison Brake

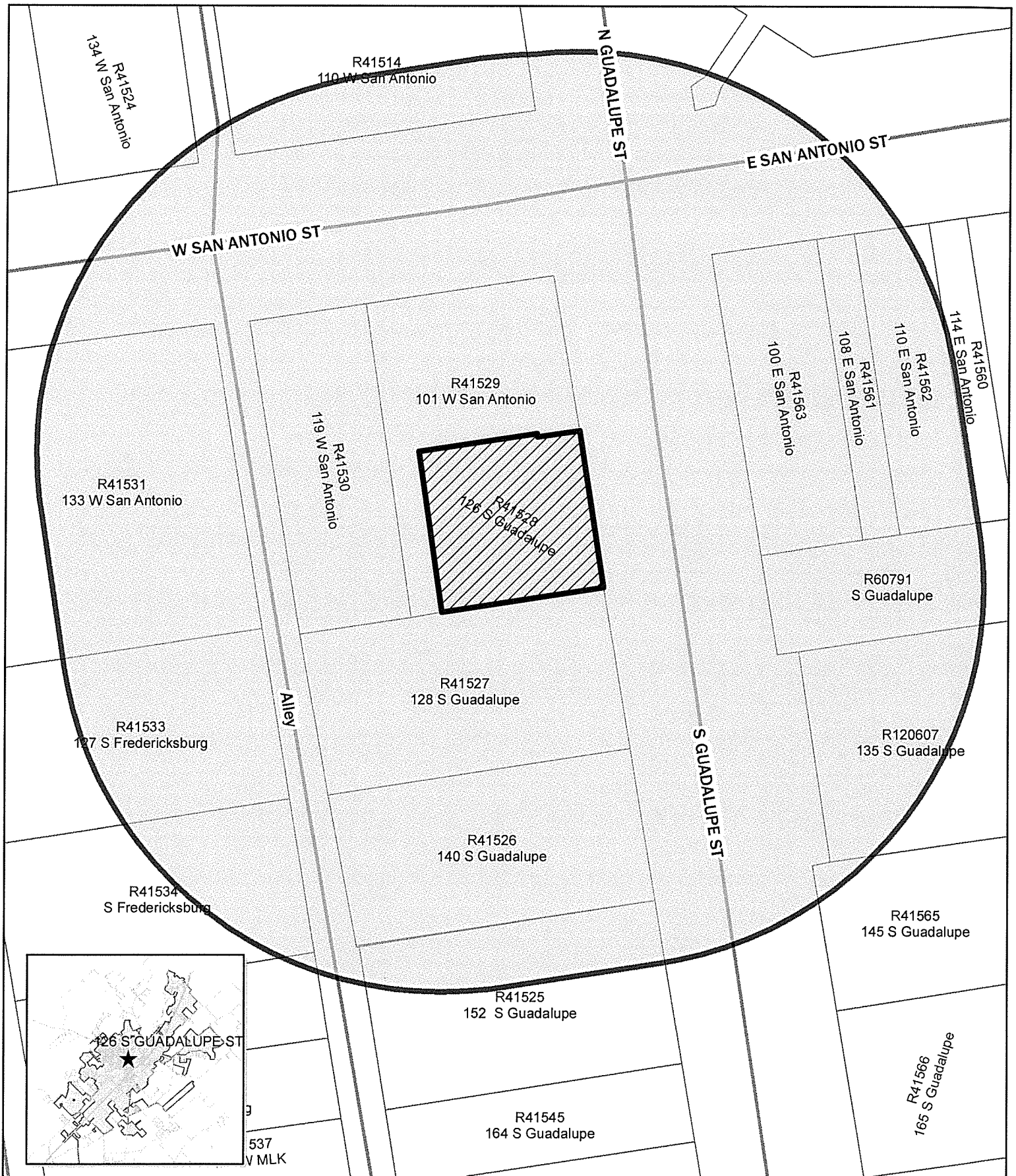
Planner

2/23/2012

Name

Title

Date



CUP-12-09

Rooftop on the Square

126 S Guadalupe

Map Date: 01/27/12



Notification Buffer
(200 feet)



Site Location



This map was created by Development Services for reference purposes only. No warranty is made concerning the map's accuracy or completeness.

0

50

100

200

Feet



CUP-12-09

Conditional Use Permit

The Rooftop on the Square

126 S. Guadalupe



Applicant Information:

Applicant: Brandon Cash

Mailing Address: 300 N. Lamar # 205
Austin, TX 78703

Property Owner: Same

Applicant Request: Granting of a Restaurant (Restricted) Conditional Use Permit (CUP) to allow the on-premise consumption of mixed-beverages.

Public Hearing Notice: Public hearing notification was mailed on February 16, 2012.

Response: John Hohn (110 E. San Antonio) called on February 21 voicing concerns over potential noise generation by the establishment. He requested that the commission take into account the outdoor noise that will be created and its potential interference with surrounding businesses.

Subject Property:

Location: 126 S. Guadalupe

Legal Description: Original Town of San Marcos, Block 12, Lot 4A, 0.166 acres.

Frontage On: S. Guadalupe

Neighborhood: Downtown

Existing Zoning: "T-5" – Urban Center

Sector: Sector 8

Utilities: Sufficient

Existing Use of Property: Restaurant

Zoning and Land Use Pattern:

| | Current Zoning | Existing Land Use |
|---------------|----------------|-------------------|
| N of property | T-5 | Commercial |
| S of property | T-5 | Commercial |
| E of property | T-5 | Commercial |
| W of property | T-5 | Commercial |

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

Mr. Cash has requested a Restricted Conditional Use Permit which requires that the business must comply with the following standards at all times. The list of standards were revised in 2011. (Section 4.3.4.2):

a) The business must have a kitchen and food storage facilities of sufficient size to enable food preparation. The kitchen must be equipped with, and must utilize, a commercial grill, griddle, fryer, oven, or similar heavy food preparation equipment.

b) The business must apply for, obtain and maintain a food establishment permit in accordance with chapter 18 of the City Code.

c) The business must serve meals to customers during at least two meal periods each day the business is open. A meal must consist of at least one entree, such as a meat serving, a pasta dish, pizza, a sandwich or similar food in a serving that serves as a main course for a meal. At least three entrees must be available during each meal period. A meal period means a period of at least four hours.

d) The business must be used, maintained, advertised and held out to the public as a place where meals are prepared and served.

Case Summary

The Rooftop on the Square is an adaptive reuse of an abandoned car detail facility. The site was subject to an amending plat in August, 2011. Site preparation and building permits were issued and the business is currently under construction. Since The Rooftop on the Square is located within the Central Business Area (CBA) it is subject to the restrictions on the number of Restricted Permits. Currently, the number of restricted permits allowed in the CBA is fifteen (15). There are fewer than fifteen restricted permits within the CBA.

The Rooftop on the Square's hours of operation are from 11:00 AM until 2:00 AM. The applicant has proposed that no live music be allowed on the premises. On October 18, 2011 the San Marcos City Council approved an Economic Development Incentive Agreement to grant a waiver of the twelve month waiting period for on-premise sales of alcohol (Section 4.3.4.2c). This agreement was approved based on the City's desire to promote local economic development and to stimulate business and commercial activity by encouraging new in-fill development and job creation in the downtown area. (Resolution 2011-131) This allows the applicant to apply for this CUP without being subject to the waiting period.

According to the site plan, The Rooftop on the Square will contain 48 indoor fixed seats along with 80 outdoor fixed seats. The gross floor area of the bar and grill is 5,000 square feet. No off-

street parking will be provided or is required since the property is located in the CBA. A site plan is attached.

Comments from Other Departments:

There were no comments from water, police, fire or inspections.

Planning Department Analysis:

The Rooftop on the Square presents an opportunity for infill and adaptive reuse in the downtown area. New construction incorporated Smart Code standards that are in place for the downtown area focusing on improving the form, appearance and functionality of the downtown area. Staff believes that the proposed use has potential to add value to the southern portion of the square and contribute positively to the downtown area.

Issues have been raised regarding potential noise emanating from the bar and grill, especially due to the outdoor seating area. The open air porch serves as the main seating area and gathering place within the establishment. Staff, along with the applicant, recommends that live music NOT be permitted on the premises. This will help cut down excess noise and provide relief to the surrounding buildings.

Staff urges the Commission to consider the added noise effects that the bar and grill could create. Staff also encourages the Commission to consider the concerns of neighboring citizens including Mr. Hohn. The Commission may put whatever noise restrictive conditions upon the permit, if any, that it feels necessary.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

Since this is the first application for a CUP for The Rooftop on the Square, staff recommends that the Commission grant the usual initial one (1) year approval. This will allow for any potential issues to be resolved upon the next CUP hearing a year from this date.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. No live music shall be allowed on the premises at any time.**

| Planning Department Recommendation: | |
|-------------------------------------|---|
| | Approve as submitted |
| X | Approve with conditions or revisions as noted |
| | Alternative |
| | Denial |

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

John Stanley

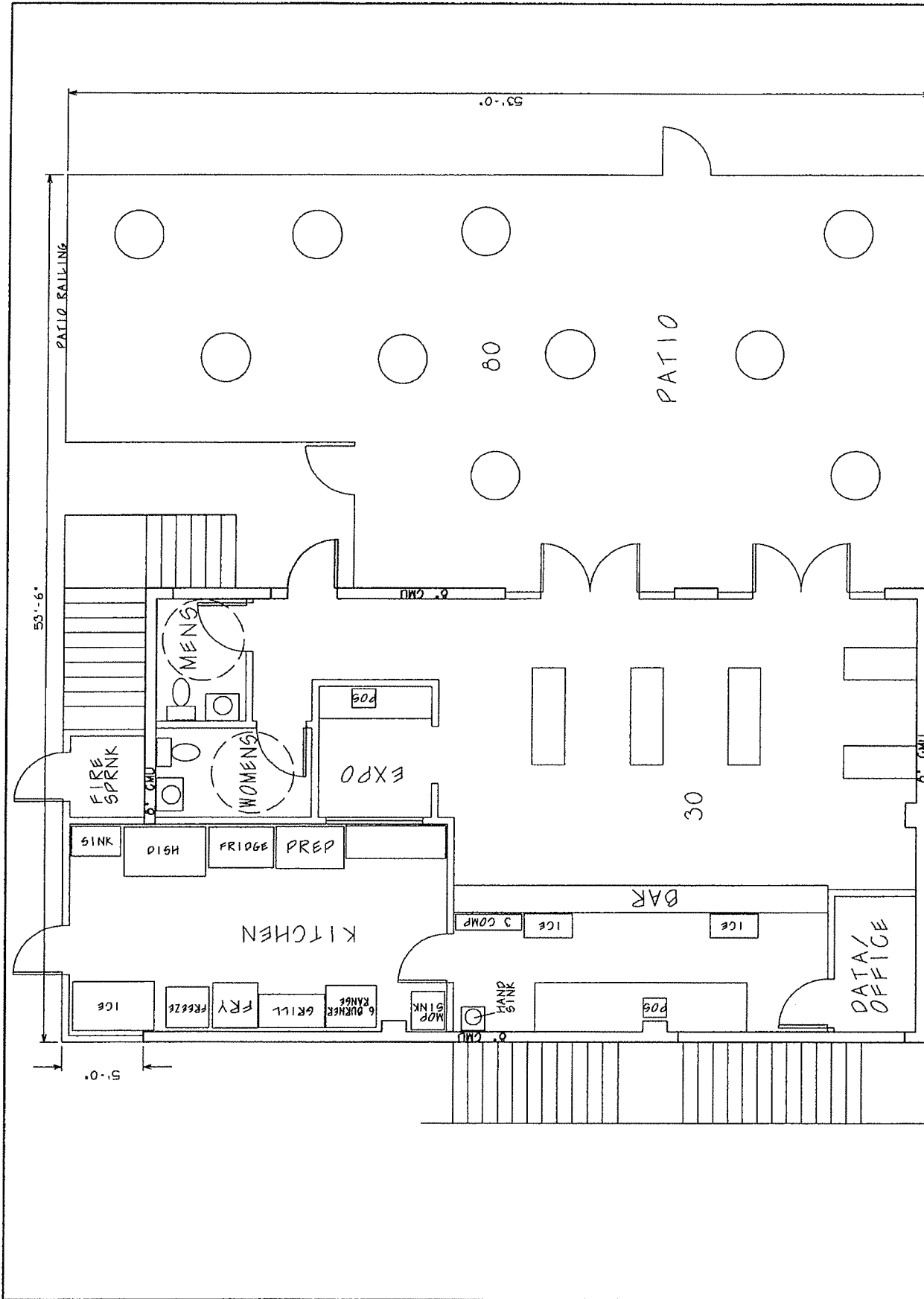
Planner

2/21/2012

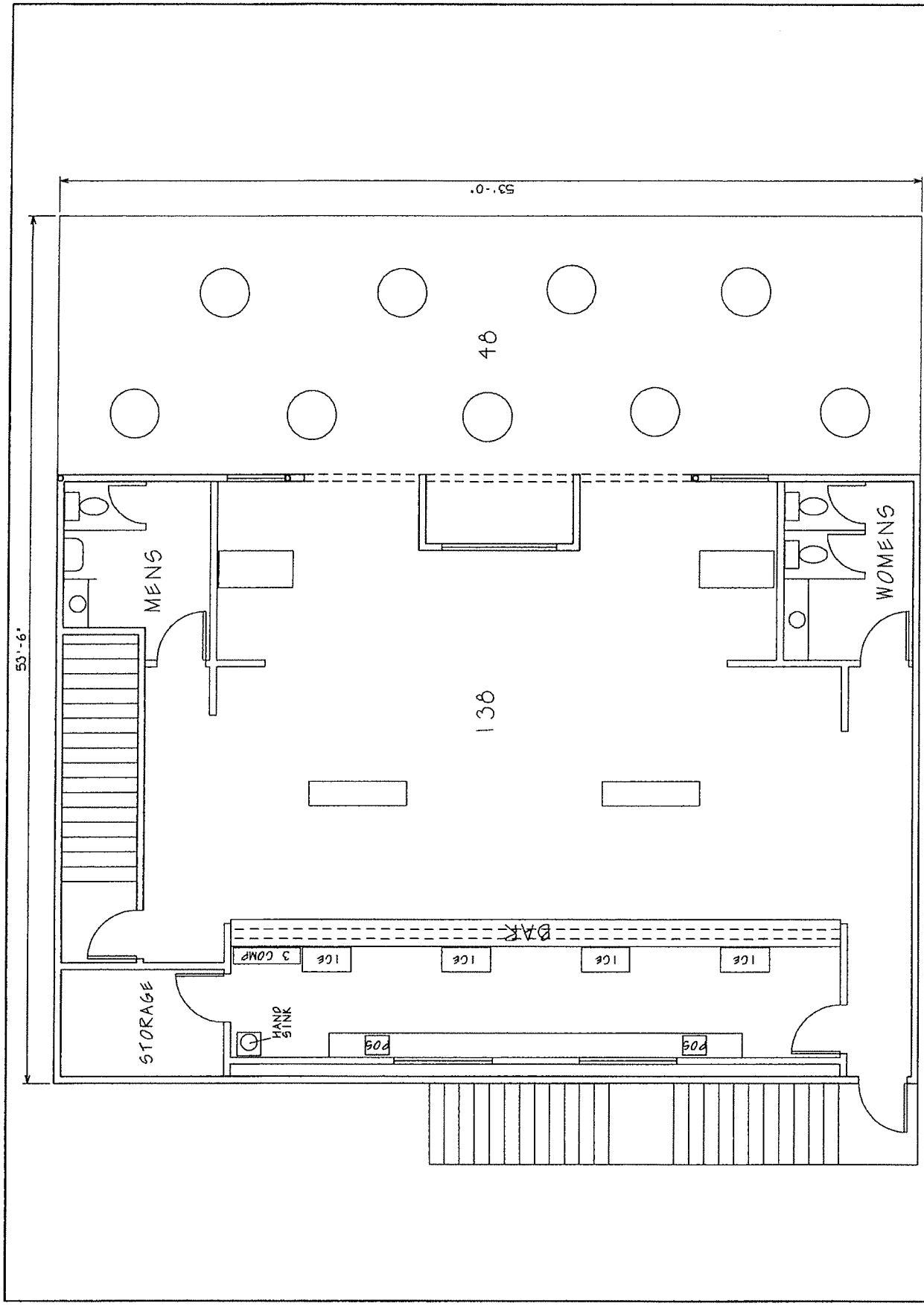
Name

Title

Date

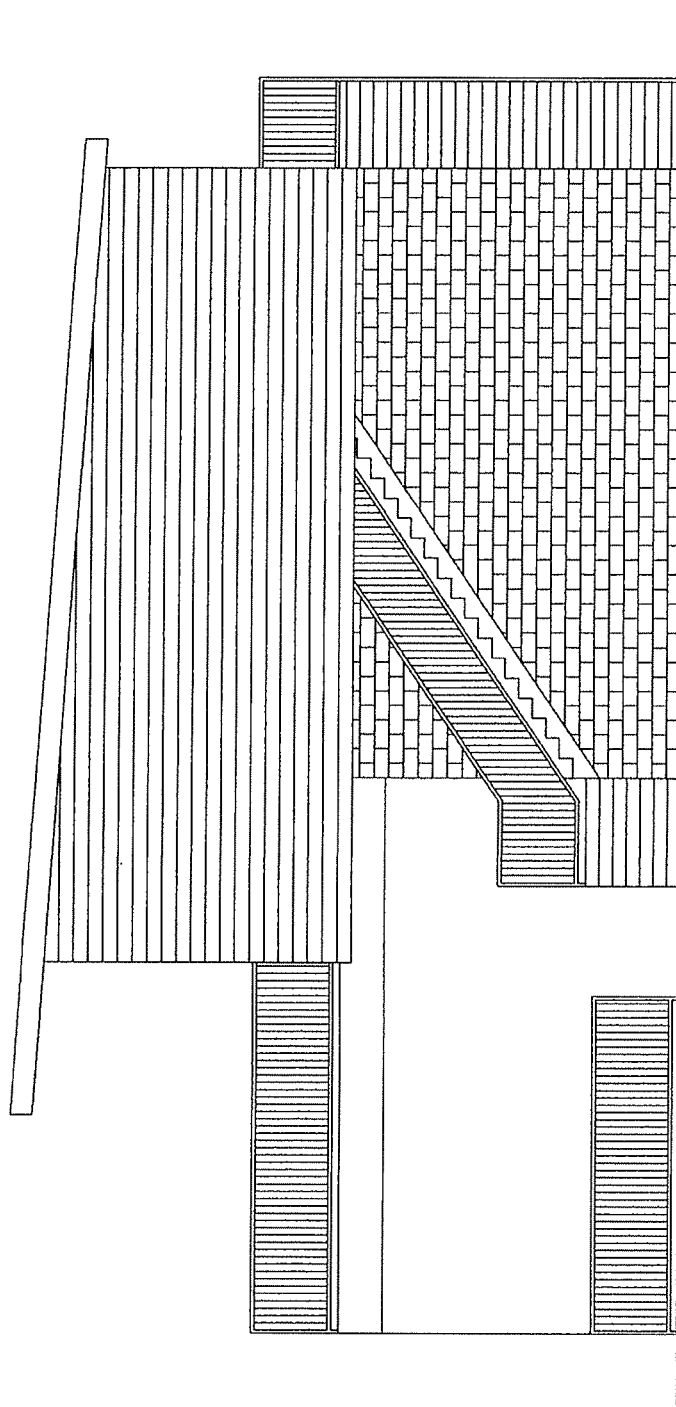


| | | | |
|------------------------------------|--|---------------------------|--|
| PROJECT: THE ROOFTOP ON THE SQUARE | | NOTES: | |
| SCALE: 1/8" = 1'-0" | | ADDRESS: 126 S. GUADALUPE | |
| DRAWING: FIRST FLOORPLAN | | SAN MARCOS, TX 78666 | |
| SHEET: A-103 | | CONTRACTOR: | |
| | | OWNERS: | |



PROJECT: THE ROOFTOP ON THE SQUARE
 SCALE: 1/8" = 1'-0"
 DRAWING: SECOND FLOORPLAN
 SHEET: A-104

ADDRESS: 126 S. GUADALUPE
 SAN MARCOS, TX 78666
 CONTRACTOR:
 OWNER:
 NOTES:



PROJECT: THE ROOFTOP ON THE SQUARE
SCALE: 1/8" = 1'-0"
DRAWING: SOUTH ELEVATION
SHEET: A-107

ADDRESS: 126 S. GUADALUPE
SAN MARCOS, TX 78666
CONTRACTOR:
OWNER:

NOTES:

RESOLUTION 2011 -131 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT PURSUANT TO SECTION 1.4.4.1 OF THE LAND DEVELOPMENT CODE ("LDC") BETWEEN THE CITY OF SAN MARCOS AND THE ROOFTOP ON THE SQUARE, L.L.C. THAT GRANTS A WAIVER OF THE WAITING PERIODS FOR ON-PREMISES SALES OF ALCOHOL UNDER SECTION 4.3.4.2 OF THE LDC (SIX MONTHS FOR BEER AND WINE AND 12 MONTHS FOR MIXED BEVERAGES) FOR A PROPOSED RESTAURANT AND BAR AT 126 SOUTH GUADALUPE STREET; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Economic Development Incentive Agreement between the City of San Marcos and The Rooftop on the Square, L.L.C. (the "Agreement") is hereby approved.

PART 2. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on October 18, 2011.


Daniel Guerrero
Mayor

Attest:


Jamie Dee Pettijohn
City Clerk

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Pursuant to Section 1.4.4.1 of the City of San Marcos Land Development Code, this agreement (the "Agreement") is entered into by and between The Rooftop on the Square, L.L.C. ("Owner") and the City of San Marcos, Texas (the "City"). The Owner and the City are collectively referred to as the "Parties".

PART 1. RECITALS

Section 1.01. The City seeks to promote local economic development and to stimulate business and commercial activity in the City by, among other things, encouraging new in-fill development and job creation in the downtown area.

Section 1.02. The real property and improvements at 126 South Guadalupe Street (the "Property") have remained vacant for several years and have fallen into decline.

Section 1.03. The Owner has proposed and intends to redevelop the Property by remodeling the existing structure and opening a restaurant serving, beer, wine and mixed beverages on the premises (the "Project").

Section 1.04. Pursuant to the requirements of Section 4.3.4.2 (b)(8) the City's Land Development Code ("LDC") the Owner is subject a six-month waiting period before beer and wine may be sold from the Property for on-premises consumption and a 12 month waiting period before mixed beverages may be sold from the Property for on-premises consumption. The waiting periods are major impediments to Owner's redevelopment of the Property and the Owner seeks a waiver of these waiting periods.

Section 1.05. The City Council finds that the Owner's request for a waiver complies with the requirements for granting a waiver of certain requirements of the LDC for economic development purposes under Section 1.4.4.1 of the LDC. The City Council, therefore, is amenable to waiving the applicability of the waiting periods to the Project.

Section 1.06. In consideration of the mutual benefits stated in the Agreement and the promises of the Parties set forth below, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

PART 2. OBLIGATIONS OF OWNER

Section 2.01. Execution of the Project. On or before December 31, 2011 the Owner will commence execution of the Project to include building renovation, landscaping, signage and related improvements in conformance with plans and specifications approved by the City's Department of Development Services. The Owner will pursue completion of the Project with commercially reasonable diligence, subject to *Force Majeure* events as defined in Section 5.05 below. The Owner, in executing the Project, shall comply with all requirements of all applicable City of San Marcos processes, procedures, ordinances, rules, regulations and standards.

BC

Section 2.02. Employment. In conjunction with the Project, the Owner will employ approximately eight full-time and 19-25 part-time employees with estimated wage rates as follows:

- a. Management: \$45,000.00 average annual salary;
- b. Cooks: \$10.00-\$15.00 per hour;
- c. Hostess: \$10.00-\$12.00 per hour; and
- d. Bartenders and Servers: \$4.00 per hour plus gratuities.

PART 3. ECONOMIC DEVELOPMENT WAIVER PROVIDED BY THE CITY

Section 3.01. Waiver of Certain Land Development Code Requirements. As to the Project, the City shall waive the waiting periods for sales of alcohol for on-premises consumption of six months for sales of beer and wine and 12 months for sales of mixed beverages under Section 4.3.4.2 (b) (8) of the LDC.

Section 3.02. Waivers Limited. The waivers granted in Section 3.01 are subject to all other required approvals of the City under applicable ordinances, rules, regulations and standards. Except as specifically granted, the City grants no other waivers of any requirements under the LDC or its Code of Ordinances. The granting of the waivers through this Agreement is not a guarantee, representation or indication by the City regarding the likelihood of approval of any other applications, permits or requests related to the Project, including any application for a conditional use permit related to sales of alcohol for on-premises consumption.

PART 4. DEFAULT AND TERMINATION

Section 4.01. Default and Termination. Until such time as the Owner has received all lawfully and properly granted City of San Marcos approvals enabling it to serve beer, wine and mixed beverages on the Property the City Manager may declare a default under this Agreement and may terminate this Agreement if the Owner:

- a. fails to commence and complete the Project within the time specified or according to the specifications in Section 2.01;
- b. made or makes any representation relied upon by the City in entering into this Agreement or in any request or submission to the City relating to this Agreement or the Project that is false or misleading in any material respect;
- c. assigns this Agreement without the consent of the City; or
- d. allows ad valorem taxes on the Property or other property in the City owned by Owner to become delinquent.

Section 4.02. Notice of Default and Termination. If the City Manager reasonably determines that the Owner is in default under Sections 4.01 (a) or (d) the City Manager will notify the Owner in writing of such default, and if the default is not cured within 30 days from the date of the notice, the City Manager may terminate this Agreement, unless reasonable efforts are being made to cure said default and said default cannot reasonably be cured within 30 days. For any default under Sections 4.01 (b) or (c) of this Agreement, the City Manager may terminate the Agreement upon sending written notice of termination to the Owner.

Section 4.03. Status of Waivers Upon Termination. Upon termination of this Agreement, the Owner agrees that the waivers granted by the City shall expire and be of no further force or effect.

Section 4.04. Automatic Termination. This Agreement shall terminate automatically upon the denial of any application, permit or request of the Owner related to the Project and the Owner's exhaustion of remedies related thereto making the Project infeasible under applicable laws, ordinances, rules and regulations.

Section 4.05. Remedies not Exclusive. In the event of default, either party may exercise its remedies hereunder together with any other statutory or common law remedies, including applicable penal and civil enforcement provisions of the Land Development Code or successor provisions, or other ordinances. Any failure by one party to enforce this Agreement with respect to one or more defaults by the other party will not waive that party's ability to enforce the Agreement after that time. In the event litigation is commenced under the terms of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

PART 5. MISCELLANEOUS

Section 5.01. Notices. All notices required by this Agreement will be delivered to the following by certified mail or confirmed facsimile transmission if either party provides to the other a number for facsimile transmission:

City:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

Owner:

Managing Member
The Rooftop on the Square, L.L.C.
300 N. Lamar No. 205
Austin, TX 78703

Each party will notify the other party in writing of any change in information required for notice under this paragraph.

Section 5.02. Assignment. The Owner may not assign this Agreement or any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld.

Section 5.03. Applicable Law and Venue. This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 5.04. No Liability. The Owner agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to the Project.

Section 5.05. Force Majeure. A Force Majeure event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

Section 5.06. No Waiver of Immunity or Liability. Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

Section 5.07. No Joint Venture. It is understood and agreed between the parties that the City and the Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

EXECUTED in duplicate originals to be effective the date of the last signature below.

CITY OF SAN MARCOS:

By:

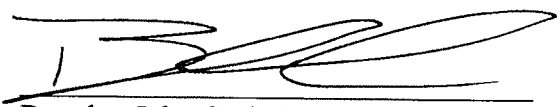

James R. Nuse, P.E., City Manager

Date: 10-19-2011

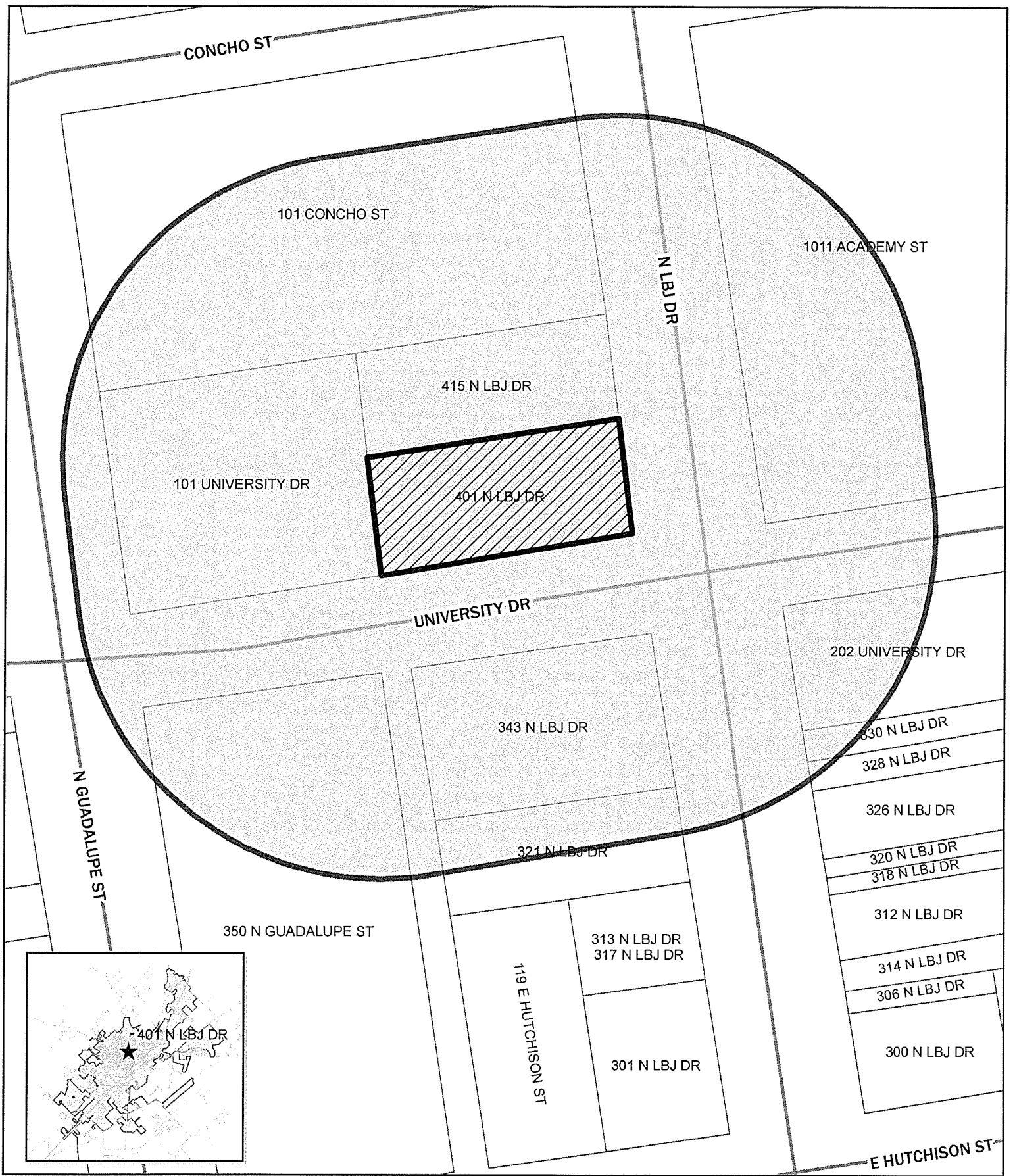
OWNER:

The Rooftop on the Square, L.L.C.

By:


Brandon John Cash, Managing Member

Date: 10/12/2011



CUP-12-10

Chipotle

401 N LBJ Dr

Map Date: 01/31/12

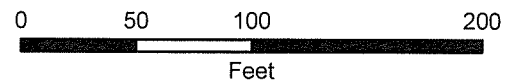


Notification Buffer
(200 feet)



Site Location

This map was created by Development Services
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concerning the map's accuracy or completeness.



CUP-12-10
Conditional Use Permit Amendment
Chipotle Mexican Grill
401 N. LBJ



Applicant Information:

Applicant: Chipotle Texas, LLC
Wendy Rundle
1401 Wynkoop, Ste. 500
Denver, Colorado 80202

Property Owner: Nancy K. Elliott
PO Box 711
San Marcos TX 78667

Applicant Request: Renewal of an existing Conditional Use Permit (CUP) to allow on-premise consumption of beer and wine at a restaurant

Notification: Public hearing notification mailed on February 14, 2012.

Response: None to date

Subject Property:

Location: 401 N. LBJ

Legal Description: Original Town of San Marcos Lot 4 & PT 3 BLK 21 75-20

Frontage On: University, CM Allen

Expiration Date: July 8, 2011

Neighborhood: Downtown

Existing Zoning: T5

Master Plan Land Use: Commercial

Sector: Sector 8

Existing Utilities: Adequate

Existing Use of Property: Restaurant

Proposed Use of Property: Restaurant

Zoning and Land Use
Pattern:

| | Current Zoning | Existing Land Use |
|---------------|----------------|------------------------|
| N of Property | T5/CS | Commercial |
| S of Property | T5 | Commercial |
| E of Property | P | Public and Institution |
| W of Property | T5/P | Commercial/Institution |

Code Requirements:

A conditional use permit allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

Case Summary:

Chipotle Mexican Grill is a restaurant located at 401 N. LBJ Dr., which opened in 2007 after extensive renovation to the site. It was formerly Murphy's Deli Sandwich Shop. Hours of operation are from 11AM-10PM every day. There are no entertainment facilities. The indoor seating capacity is 56, and there is outdoor seating for 24. Adequate parking is provided. Nearby land uses are generally commercial, including several other restaurants, with the university to the west and north.

On June 26, 2007 P&Z approved a CUP for liquor, beer, and wine consumption for a period of one year. The CUP was renewed on July 8, 2008 for a period of three years. This CUP expired in July of 2011, and the applicant was notified by staff this past January. The applicant has indicated to staff that no alcohol has been served since expiration.

Comments from Other Departments:

Building, Engineering, Police Fire, Environmental Health, and Code Enforcement have reported no major concerns regarding the subject property. The Police Department has not reported any points assessed against the establishment.

Planning Department Analysis

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

Considering that no departments or the public have stated concerns, staff believes a renewal for the life of the TABC permit is appropriate.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The CUP be valid for the life of the TABC permit, provided standards are met, subject to the point system.**

| Planning Department Recommendation: | |
|-------------------------------------|---|
| | Approve as submitted |
| X | Approve with conditions or revisions as noted |
| | Alternative |
| | Denial |

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Christine Barton-Holmes, LEED AP Chief Planner February 14, 2012

| | | |
|-------------|--------------|-------------|
| Name | Title | Date |
|-------------|--------------|-------------|

ORDINANCE NO. 2012-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE LAND DEVELOPMENT CODE CHAPTER 1 – DEVELOPMENT PROCEDURES, ARTICLE 5 – ZONING PROCEDURES, DIVISION 1 – PETITION FOR ZONING MAP AMENDMENTS, BY ESTABLISHING A MINIMUM PERIOD BETWEEN THE RECOMMENDATION AND REPORT OF THE PLANNING AND ZONING COMMISSION OF A ZONING MAP AMENDMENT AND CONSIDERATION BY THE COUNCIL OF SUCH AMENDMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. City staff proposed and the Planning and Zoning Commission has considered and recommended approval of revisions and amendments to the Land Development Code.
2. The City Council hereby finds and determines that the adoption of the following ordinance incorporating such revisions and amendments is in the interest of the public health, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Land Development Code is amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by ~~strikethroughs~~.

SECTION 2. Chapter 1, Development Procedures, Article 5 - Zoning Procedures, Division 1 - Petition for Zoning Map Amendments, Section 1.5.1.4(d) - Processing of Application and Decision, is amended as follows:

“(d) Decision. The City Council shall consider the report of the Planning and Zoning Commission and the petition at a public hearing no sooner than seven (7) days after the date of the Planning and Zoning Commission’s recommendation and report. The City Council may vote only on a specified proposed amendment that has been recommended for approval or denial by the Planning and Zoning Commission. If the City Council wants to consider a zoning designation other than that recommended by the Planning and Zoning Commission, the Council shall return the petition to the Planning and Zoning Commission with direction to make a recommendation on the alternate designation suggested by the City Council. A decision of the Council reclassifying land to a different zoning district shall be in the form of an ordinance that amends the City’s official Zoning Map.”

SECTION 3. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on 2012.

PASSED, APPROVED AND ADOPTED on second reading on 2012.

Daniel Guerrero
Mayor

Attest:

Approved:

Jamie Lee Pettijohn
City Clerk

Michael J. Cosentino
City Attorney